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**DEC 08 2003**

**OFFICE OF PETITIONS**

In re Application of	:	
Holger Beckmann et al.	:	
Application No. 09/934,025	:	DECISION ON RENEWED
Date Deposited: August 21, 2001	:	PETITION UNDER
Attorney Docket No. 018781-	:	37 C.F.R. \$1.10
001710US	:	
Title: DETECTION METHOD FOR	:	
MONITORING BETA TUBULIN ISOTYPE	:	
SPECIFIC MODIFICATION	:	

This is a decision on the Renewed Petition under 37 C.F.R. \$1.10, filed November 26, 2003, requesting that application number 09/934,025 be accorded a filing date of August 20, 2001.

The application was deposited on August 21, 2001.

On October 30, 2003, applicant filed the original petition, where it was alleged that the application was deposited on August 20, 2001. Petitioner set forth that a postcard receipt and Express Mail label no. EL827150093US were included with the petition, but neither was located in the file. As such, the petition was dismissed via a decision mailed on November 17, 2003. The decision further indicated:

... this petition was filed over two years after the filing of the application, and 37 C.F.R. \$1.10 requires any petition under this section to be filed promptly.

With the renewed petition, petitioner has included a copy of applicants' postcard receipt acknowledging receipt of the instant application in the United States Patent and Trademark Office

(Office) on August 21, 2001. Petitioner has further included a copy of the Utility Application Transmittal form, which contains the Express Mail number listed above, coupled with a copy of the Express Mail label, which bears the date August 20, 2001.

A check of the United States Postal Service (USPS) website (<http://www.usps.com/shipping/trackandconfirm.htm>) was inconclusive, as it stated that the information pertaining to this mailing is stored off-line. A check of the Office's USPS Express Mail Finder Database computer program shows that the package was accepted by the USPS on August 20, 2001. Copies of both of these search results are enclosed.

When an applicant mails correspondence to the Office with sufficient postage utilizing the Express Mail Post Office to Addressee, 37 CFR §§1.10(a) and (b) establish that the petitioner is entitled to the date of deposit as the filing date. When a different filing date is accorded to the application, 37 CFR §§1.10(c)-(e) provide a means for petitioning the Office to correct the filing date.

Unfortunately, 37 CFR §§1.10(c)-(e) state that the petition must be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than that which the applicant believes he or she is entitled to. Therefore, time is of the essence.

In the renewed petition, petitioner explains "applicants' attorney became aware that the Patent Office had accorded a filing date other than the USPS deposit date during preparation of a response to the restriction requirement which was not issued until September 26, 2003<sup>1</sup>." Petitioner further indicates that the "error in the date on the Filing Receipt had not been noticed previously<sup>2</sup>."

The Office has no way of determining on what date the postcard receipt was returned to petitioner. In the absence of any information to the contrary, it is reasonable to assume that the postcard was mailed shortly after August 21, 2001.

Additionally, a copy of the filing receipt has not been located in the file. As the Office cannot determine when the filing receipt was sent to the petitioner, it is reasonable to assume that it was mailed shortly after August 21, 2001, and that it granted a filing date of August 21, 2001.

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<sup>1</sup> Petition, page 1.

<sup>2</sup> Id.

Roughly two years later, the original petition was filed.

Petitioner has included an express mail label which indicates that the application was deposited on August 20, 2001. The postcard receipt, received roughly two years ago, bears a date stamp "08/21/01." This should have indicated to the petitioner that something was amiss.

Similarly, the filing receipt, received roughly two years ago, placed the applicant on notice of the filing date that had been assigned - August 21, 2001.

However, petitioner has submitted no evidence as to why it took him two years to notice these two discrepancies and submit this petition. As such, it does not appear that petitioner has met the obligation imposed by this portion of the C.F.R.

Accordingly, the petition is **DISMISSED**.

The reply to this letter may be submitted by mail<sup>3</sup>, hand-delivery<sup>4</sup>, or facsimile<sup>5</sup>. **Please note that the later two have changed, as of December 1, 2003.** Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.10". This is not a final agency action within the meaning of 5 U.S.C 704.

On second renewed petition, petitioner may wish to consider filing a petition under 37 C.F.R. §1.182 to waive the portions of 37 CFR §§1.10(c)-(e) which state that the petition must be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than that which the applicant believes he or she is entitled to.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries regarding *this decision* should be directed to

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<sup>3</sup> Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>4</sup> Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202

<sup>5</sup> (703) 872-9306.

the undersigned at (703) 305-0011.



Paul Shanowski

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Office of Petitions

United States Patent and Trademark Office

Encl. USPS Tracking Results (paper No. 9)

Express Mail Information Database Result (paper no. 10)